IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL FROM ORDER NO. 83 OF 2001

1. Smt. Lizette Barbosa

2. Dr. Ivo Barbosa
both residing at Bagawaddo,
Opp. St. Thomas Church,
Cansaulim, Goa.

3. Smt. Palmira Gonsalves

4. Mr. Armindo Gonsalves

5. Mr. Amelia Gonsalves

6. Mr. Ashley Gonsalves
appellants no. 3 to 6 residing at Cana,
Benaulim, Salcete, Goa. .... Appellants

Versus

Mr. Hubert Braganza,
residing near Milagre Chapel
Godinho Vaddo, Majorda, Goa 403 713. .... Respondent

Shri M.B. D'Costa, Sr. Advocate with Shri J.A. Lobo, Advocates for the Appellants.

None for the Respondent.

CORAM : **P.V. KAKADE, J.**

DATE : **15th NOVEMBER, 2006**

ORAL JUDGMENT :

Heard Advocate for the Appellants. None appears for the respondent though served.

2. This appeal is preferred against the order passed by Comarca Judge of Salcete and Quepem at Margao in Inventory Proceedings No. 82 of 1993, wherein it was directed that the interested parties i.e. the present appellants, were disinherited/lose the benefit of the Inventory Proceedings No. 82 of 1993, the estate of the deceased in terms of Article 2053 of the Portuguese Civil Code.

3. The learned Counsel for the appellants submitted that the provision of Article 2053 is not at all applicable, as they are not head of the families and, therefore, such order cannot be passed against them and they cannot be disinherited in any manner under the said provision. The learned Counsel also brought to my notice, provisions relating to disinheritance which are contained in Article 1875 to Article 1884 and it was submitted that this provision is not at all applicable to the status of the present appellants and, therefore, by virtue of said provisions, they cannot be disinherited to the property.

4. In view of this submission and in view of the contents of the order passed, I am satisfied that there is error committed by the learned Judge while passing such order. Therefore, there is no alternative but to remand the matter to the Comarca Judge for adjudication according to law.

5. Therefore, the appeal is allowed. The impugned order passed by the Comarca Judge of Salcete and Quepem at Margao in Inventory Proceedings No. 82 of 1993 is hereby set aside, with direction that the relevant issue shall be properly adjudicated by the learned Judge after giving opportunity to both the sides to put up their respective cases. Adjudication shall be complete within 6 months from the date of receipt of the writ of this Court. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

NH